

Sirs:

I would like to comment strongly against any Federally- mandated "anti-record" or "anti-copy" flag requirement for digital television recorders.

It has long been recognized that consumers have a Fair Use right (Disney v. Sony) that allows individuals the right to record, time-shift, and archive any materials broadcast over the free airwaves, as well as providing a check of responsible conduct by broadcasters by allowing the general public to archive broadcasts for later use in proceedings before the FCC itself (sometimes known as "aircheck tapes").

NPRM 02-230 would mandate a broadcaster-controlled flag that would inhibit recording, time-shifting, and archiving of these broadcasts off-the-air, essentially violating this "fair use" acceptance, making the free airwaves a venue for content that is essentially pay-per-view, as well as completely evanescent and unable to be dependably subpoenaed for use in evidence in an FCC or court proceeding (such as slander, financial misrepresentation, or medical fraud).

The business model of pay-per-view already has the more-than-adequate venue of cable transmission, and therefore there is no justification for the anti-fair-use digital flag of NPRM 02-230 on the basis of allowing a "new" business model.

Similarly, by disabling the ability of the general public to archive such broadcasts, the legal rights of persons to document for later use any broadcast is effectively annulled. Such documentation may be pivotal in prosecuting cases such as civil slander or fraud, as well as criminal cases where the Federal Government itself may wish to become a co-complainant, as in misrepresentation of products or criminal fraud in the financial (SEC) or medical (FDA) areas.

Without the ability of the general public to record and archive future digital broadcasts on an unrestricted basis, the ability of both individuals and the Federal Government itself to prosecute cases involving over-the-air broadcasts of fraud, slander, or gross disregard for the FCC's own broadcast standards of decency will effectively cease to exist.

The alternative of requiring the broadcaster itself to maintain an archive is insufficient. Consider the cases against Enron and Arthur Anderson, where "respectable" companies engaged in wholesale and felonious destruction of documents and information they were legally mandated to preserve. There is no reason to believe that a broadcaster facing a multimillion-dollar lawsuit would not instead choose to "accidentally lose" a particular archive tape of a particular broadcast.

For these reasons, I must ask that there be no Federally-mandated "anti-record" or "anti-copy" flag on any recording machine designed or marketed to provide recordings of off-the-air broadcasts.

-Sincerely,

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GROL PG-2-4483 / w/radar endorsement